

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SUSANNA J. WOOD,

Plaintiff and Respondent,

v.

ASSISTED HOME HOSPICE et al.,

Defendants and Appellants.

2d Civil No. B209571
(Super. Ct. No. SC050002)
(Ventura County)

ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed on March 3, 2010, be modified as follows:

1. On page 6, the final sentence in the first full paragraph is modified to read:

She has performed union negotiations, has certification for senior hospice administration and, for over 15 years, served as vice-president of human resources for Maxim Healthcare.

2. The paragraph commencing at the bottom of page 10 with "By limiting the jury's consideration" and ending at the top of page 11 with "meritorious defense" is modified to read:

By limiting the jury's consideration to the time at which the letter was signed, the court precluded it from considering the remaining issues recited in CACI 330. Had the jury been properly instructed, it would have been required to determine whether Patricia had knowledge of a mistake. If it had answered, "Yes," then it would also have been required to determine whether Susanna knew Patricia was mistaken and used that mistake to take advantage of Assisted. Depending upon its answers to the foregoing questions, the jury could have reasonably concluded that no contract was created, and Susanna was not entitled to two weeks of vacation pay per one week of work. The language of Special Verdict One deprived Assisted of a potentially meritorious defense. As we have already indicated, the trial court applied a heightened burden of proof. Susanna has failed to cite any authority that the clear and convincing evidence standard applies to the affirmative defense of unilateral mistake.

3. On page 11, the first and second full paragraphs beginning with "Susanna characterizes the issue" and ending with "rescission is irrelevant" are deleted.

There is no change in judgment.

Appellant's petition for rehearing is denied.